

CPCH0162131P

Patent Office of the People's Republic of China

Address : Receiving Section of the Chinese Patent Office, No. 6 Tucheng Road West, Haidian District, Beijing, Postal code: 100088

<b>Applicant</b>	RIKEN			<b>Seal of Examiner</b>	<b>Date of Issue</b>
<b>Agent</b>	China Patent Agent (H.K.) Ltd.				January 2, 2004
<b>Patent Application No.</b>	00805910.1	<b>Application Date</b>	February 9, 2000	<b>Exam Dept.</b>	
<b>Title of Invention</b>	TUMOR VACCINES				

***First Office Action***

(PCT application entering into the national phase)

1. ☒ Under the provision of Art. 35, para. 1 of the Patent Law, the examiner has made an examination as to substance of the captioned patent application for invention upon the request for substantive examination filed by the applicant.  
  
☐ Under the provision of Art. 35, para. 2 of the Patent Law, the Chinese Patent Office has decided to conduct an examination of the captioned patent application for invention on its own initiative.
2. ☒ The applicant requests that  
the filing date Feb9, 1999 at the JP Patent Office be taken as the priority date of the present application,  
the filing date \_\_\_\_\_ at the \_\_\_\_\_ Patent Office be taken as the priority date of the present application,  
the filing date \_\_\_\_\_ at the \_\_\_\_\_ Patent Office be taken as the priority date of the present application.
3. ☐ The following amended documents submitted by the applicant cannot be accepted for failure to conform with Art. 33 of the Patent Law:  
☐ the Chinese version of the annex to the international preliminary examination report.  
☐ the Chinese version of the amended documents submitted according to the provision of Rule 19 of the Patent Cooperation Treaty.  
☐ the amended documents submitted according to the provision of Rule 28 or Rule 41

of the Patent Cooperation Treaty.

- ☐ the amended documents submitted according to the provision of Rule 51 of the Implementing Regulations of the Patent Law.

See the text portion of this Office Action for detailed reasons why the amendment cannot be accepted.

4. ☒ Examination is conducted on the Chinese version of the initially-submitted international application.

- ☐ Examination is conducted on the following document(s):

☐ page \_\_\_\_\_ of the description, based on the Chinese version of the initially-submitted international application documents;

page \_\_\_\_\_ of the description, based on the Chinese version of the annex to the international preliminary examination report;

page \_\_\_\_\_ of the description, based on the amended documents submitted according to the provision of Rule 28 or Rule 41 of the Patent Cooperation Treaty;

page \_\_\_\_\_ of the description, based on the amended documents submitted according to the provision of Rule 51 of the Implementing Regulations of the Patent Law.

☐ claim(s) \_\_\_\_\_, based on the Chinese version of the initially-submitted international application documents;

claim(s) \_\_\_\_\_, based on the Chinese version of the amended documents submitted according to the provision of Rule 19 of the Patent Cooperation Treaty;

claim(s) \_\_\_\_\_, based on the Chinese version of the annex to the international preliminary examination report;

claim(s) \_\_\_\_\_, based on the amended documents submitted according to the provision of Rule 28 or Rule 41 of the Patent Cooperation Treaty;

claim(s) \_\_\_\_\_, based on the amended documents submitted according to the provision of Rule 51 of the Implementing Regulations of the Patent Law.

☐ Fig(s) \_\_\_\_\_, based on the Chinese version of the initially-submitted international application documents;

Fig(s) \_\_\_\_\_, based on the Chinese version of the annex to the international preliminary examination report;

Fig(s) \_\_\_\_\_, based on the amended documents submitted according to the provision of Rule 28 or Rule 41 of the Patent Cooperation Treaty;

Fig(s) \_\_\_\_\_, based on the amended documents submitted according to the provision of Rule 51 of the Implementing Regulations of the Patent Law.

5. ☒ The following reference document(s) is/are cited in this Office Action (its/their serial number(s) will continue to be used in the subsequent course of examination):

Serial No.	Number or Title(s) of Document(s)	Date of Publication (or filing date of interfering application)
1	CN11119495A	Date: March 27, 1996
2		Date
3		Date
4		

6. Concluding comments on the examination:

☐ On the description:

- ☐ What is stated in the application comes within the scope of that no patent right shall be granted as prescribed in Art. 5 of the Patent Law.
- ☐ The description is not in conformity with the provision of Art. 26, para. 3 of the Patent Law.

☒ On the claims:

- ☐ Claim(s) \_\_\_\_\_ come(s) within the scope of that no patent right shall be granted as prescribed in Art. 25 of the Patent Law.
- ☒ Claim(s) 1-6 has/have no novelty as prescribed in Art. 22, para. 2 of the Patent Law.
- ☐ Claim(s) \_\_\_\_\_ has/have no inventiveness as prescribed in Art. 22, para. 3 of the Patent Law.
- ☐ Claim(s) \_\_\_\_\_ has/have no practical applicability as prescribed in Art. 22, para. 4 of the Patent Law.
- ☐ Claim(s) \_\_\_\_\_ is/are not in conformity with the provision of Art. 26, para. 4 of the Patent Law.
- ☐ Claim(s) \_\_\_\_\_ is/are not in conformity with the provision of Art. 31, para. 1 of the Patent Law.
- ☐ Claim(s) \_\_\_\_\_ is/are not in conformity with the provisions of Rules 20 to 23 of the Implementing Regulations.
- ☐ Claim(s) \_\_\_\_\_ is/are not in conformity with the provision of Art. 9 of the Patent Law.
- ☐ Claim(s) \_\_\_\_\_ is/are not in conformity with the provision of Rule 12, para. 1 of the

## Implementing Regulations.

See the text portion of this Office Action for detailed analysis of the above concluding comments.

7. Based on the above concluding comments, the examiner deems that
- ☐ the applicant should make amendment to the application document(s) according to the requirements put forward in the text portion of this Office Action.
  - ☐ the applicant should expound in his/its observations why the captioned patent application is patentable and make amendment to what is not in conformity with the provisions pointed out in the text portion of this Office Action, otherwise, no patent right shall be granted.
  - ☒ the patent application contains no substantive content(s) for which a patent right may be granted, if the applicant has no sufficient reason(s) to state or his/its stated reason(s) is/are not sufficient, said application will be rejected.
  - ☐


8. The applicant should note the following items:

- (1) Under Art. 37 of the Patent Law, the applicant should submit his/its observations within **four** months from the date of receipt of this Office Action; if, without any justified reason(s), the time limit for making written response is not met, said application shall be deemed to have been withdrawn.
- (2) The amendment made by the applicant to said application should be in conformity with the provision of Art. 33 of the Patent Law, the amended text should be in duplicate and its form should conform with the related provisions of the Guide to Examination.
- (3) If no arrangement is made in advance, the applicant and/or the agent shall not come to the Chinese Patent Office to have an interview with the examiner.
- (4) The observations and/or amended text should be sent to the Receiving Section of the Chinese Patent Office by mail or by personal delivery, if not sent to the Receiving Section by mail or by personal delivery, the document(s) will have no legal effect.**

9. This Office Action consists of the text portion totalling   1   page(s) and of the following attachment(s):

- ☒   1   copy(copies) of the reference document(s) totalling   12   page(s).

# 中华人民共和国国家知识产权局

邮政编码: 100032 北京市西城区金融街 27 号投资广场 B 座 19 层 中国专利代理 (香港) 有限公司 曹雯 姜建成		龙孙印大 审查员签章	
申请号	00805910.1	部门及通知书类型	4-D
申请人	理化学研究所、约翰斯霍普金斯大学、细胞医药股份有限公司		
发明名称	肿瘤疫苗		

## 第一次审查意见通知书

(进入国家阶段的 PCT 申请)

0162131P

- ☒ 依申请人提出的实审请求, 根据专利法第 35 条第 1 款的规定, 审查员对上述发明专利申请进行实质审查。  
☐ 根据专利法第 35 条第 2 款的规定, 国家知识产权局专利局决定自行对上述发明专利申请进行审查。
- ☒ 申请人要求以在:
  - 日本 专利局的申请日 1999 年 02 月 09 日为优先权日,
  - 专利局的申请日 年 月 日为优先权日,
  - 专利局的申请日 年 月 日为优先权日。
- ☐ 申请人于 年 月 日提交的修改文件, 不符合专利法实施细则第 51 条的规定。  
☐ 申请人提交的下列修改文件不符合专利法第 33 条的规定。
  - ☐ 国际初步审查报告附件的中文译文。
  - ☐ 依据专利合作条约第 19 条规定所提交的修改文件的中文译文。
  - ☐ 依据专利合作条约第 28 条或 41 条规定所提交的修改文件。
- ☒ 审查是针对原始提交的国际申请的中文译文进行的。  
☐ 审查是针对下述申请文件进行的:
  - ☐ 说明书 第 页, 按照原始提交的国际申请文件的中文译文;
  - 第 页, 按照国际初步审查报告附件的中文译文;
  - 第 页, 按照依据专利合作条约第 28 条或 41 条规定所提交的修改文件;
  - 第 页, 按照依据专利法实施细则第 51 条规定所提交的修改文件。
  - ☐ 权利要求 第 项, 按照原始提交的国际申请文件的中文译文;
  - 第 项, 按照国际初步审查报告附件的中文译文;
  - 第 项, 按照依据专利合作条约第 28 条或 41 条规定所提交的修改文件;
  - ☐ 附图 第 页, 按照原始提出的国际申请文件的中文译文;
  - 第 页, 按照国际初步审查报告附件的中文译文;
  - 第 页, 按照依据专利合作条约第 28 条或 41 条所提交的修改文件;

☒ 本通知书引用下述对比文献 (其编号在今后的审查过程中继续沿用):

回函请寄: 100088 北京市海淀区蓟门桥西土城路 6 号 国家知识产权局专利局受理处收

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(注: 凡寄给审查员个人的信函不具有法律效力)

17 MAY 2004

编号	文件号或名称	公开日期 (或抵触申请的申请日)
1	CN1119495A	1996 年 03 月 27 日
2		年 月

CN 1119495A  
(correct)

6. 审查的结论性意见:

☐ 关于说明书:

- ☐ 申请的内容属于专利法第 5 条规定的不授予专利权的范围。
- ☐ 说明书不符合专利法第 26 条第 3 款的规定。
- ☐ 说明书不符合专利法第 33 条的规定。
- ☐ 说明书的撰写不符合专利法实施细则第 18 条的规定。

☒ 关于权利要求书:

- ☒ 权利要求 1-6 不具备专利法第 22 条第 2 款规定的新颖性。
- ☐ 权利要求 不具备专利法第 22 条第 3 款规定的创造性。
- ☐ 权利要求 不具备专利法第 22 条第 4 款规定的实用性。
- ☐ 权利要求 属于专利法第 25 条规定的不授予专利权的范围。
- ☐ 权利要求 不符合专利法第 26 条第 4 款的规定。
- ☐ 权利要求 不符合专利法第 31 条第 1 款的规定。
- ☐ 权利要求 不符合专利法第 33 条的规定。
- ☐ 权利要求 不符合专利法实施细则第 13 条第 1 款的规定。
- ☐ 权利要求 不符合专利法实施细则第 2 条第 1 款的规定。
- ☐ 权利要求 不符合专利法实施细则第 20 条的规定。
- ☐ 权利要求 不符合专利法实施细则第 21 条的规定。
- ☐ 权利要求 不符合专利法实施细则第 22 条的规定。
- ☐ 权利要求 不符合专利法实施细则第 23 条的规定。

上述结论性意见的具体分析见本通知书的正文部分。

7. 基于上述结论性意见, 审查员认为:

- ☐ 申请人应按照通知书正文部分提出的要求, 对申请文件进行修改。
- ☐ 申请人应在意见陈述书中论述其专利申请可以被授予专利权的理由, 并对通知书正文部分中指出的不符合规定之处进行修改, 否则将不能授予专利权。
- ☒ 专利申请中没有可以被授予专利权的实质性内容, 如果申请人没有陈述理由或者陈述理由不充分, 其申请将被驳回。

8. 申请人应注意下述事项:

- (1) 根据专利法第 37 条的规定, 申请人应在收到本通知书之日起的 肆 个月内陈述意见, 如果申请人无正当理由逾期不答复, 其申请将被视为撤回。
- (2) 申请人对其申请的修改应符合专利法第 33 条的规定, 修改文本应一式两份, 其格式应符合审查指南的有关规定。
- (3) 申请人的意见陈述书和 / 或修改文本应邮寄或递交国家知识产权局专利局受理处, 凡未邮寄或递交给受理处的文件不具备法律效力。
- (4) 未经预约, 申请人和 / 或代理人不得前来国家知识产权局专利局与审查员举行会晤。

9. 本通知书正文部分共有 1 页, 并附有下列附件:

☒ 引用的对比文件的复印件共 1 份 12 页。

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## 第一次审查意见通知书正文

如说明书所述, 本申请涉及在肿瘤的复发预防、转移抑制及治疗方面有用的肿瘤疫苗。经审查, 现提出如下审查意见:

1. 权利要求 1 请求保护一种肿瘤疫苗。对比文件 1 中已经公开了一种肿瘤疫苗 (参见说明书全文, 特别是 5 页, 23 页, 59 页, 61 页, 权利要求 1-55), 所公开的肿瘤疫苗中含有肿瘤细胞以及细胞因子白细胞介素-2 (IL-2) 和/或粒细胞-巨噬细胞集落刺激因子 (GM-CSF)。将权利要求 1 所请求保护的技术方案与对比文件 1 所公开的内容相比, 对比文件 1 已经公开了权利要求 1 所请求保护技术方案的全部技术特征。且对比文件 1 所公开的技术方案与该权利要求所请求保护的方案属于同一技术领域, 并能产生相同的技术效果, 因此权利要求 1 所要求保护的方案不符合专利法第 22 条第 2 款有关新颖性的规定。
2. 基于上述第 1 点意见同样的理由, 权利要求 2-6 所请求保护技术方案的全部技术特征也已经被对比文件 1 公开。且对比文件 1 所公开的技术方案与这些权利要求所请求保护的方案属于同一技术领域, 并能产生相同的技术效果, 因此权利要求 2-6 所要求保护的方案不符合专利法第 22 条第 2 款有关新颖性的规定。

本申请权利要求书以及说明书中均没有记载任何可以授予专利权的实质性内容, 即使申请人对权利要求进行重新组合和 / 或根据说明书记载的内容作进一步的限定, 本申请也不具备被授予专利权的前景, 因此不再对申请文件中其它的形式问题予以一一指出, 如果申请人不能在本通知书规定的答复期限内做出能够克服上述全部缺陷的答复, 本申请将被驳回。